

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company, d/b/a NSTAR	)	
Electric, for Approvals Relating to the Assignment	)	
of Power Purchase Agreements with Ocean State Power	)	D.T.E. 04-68
and Ocean State Power II	)	
	)	

**ATTORNEY GENERAL'S MOTION TO REOPEN HEARINGS**

**I. INTRODUCTION**

Pursuant to 220 C.M.R. §§ 1.11(8) and Department of Telecommunications and Energy (“Department”) precedent, the Attorney General seeks to reopen hearings in D.T.E. 04-68 based upon a showing of good cause. The Department closed the evidentiary record on October 14, 2004 except for one record request, RR-DTE-6. Boston Edison Company, d/b/a NSTAR Electric, (the “Company”) submitted a response to RR-DTE-6 on November 9, 2004 and supplemented its response on November 12, 2004. This previously unknown information, submitted after the Department had closed the hearing, may significantly impact the Department’s decision.<sup>1</sup>

**II. STANDARD OF REVIEW**

The Department’s procedural rule on reopening hearings states that “[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause.” 220 C.M.R 1.11 (8). The Department has defined good cause for purposes of reopening as a showing that the proponent

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<sup>1</sup> During the hearing, the Hearing Officer indicated that the record may be reopened once the Company provided the new information and its effect on the Company’s savings analysis. Tr. 1, p. 154.

has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision. *Machise v. New England Telephone and Telegraph Company*, D.P.U. 87-AD-12-B, pp. 4-7 (1990); *Boston Gas Company*, D.P.U. 88-67 (Phase II), p. 7 (1989); *Tennessee Gas Pipeline Company*, D.P.U. 85-207-A, pp. 11-12 (1986).

### **III. ARGUMENT**

The Company's response to RR-DTE-6, provided after the hearings had closed, includes a new energy forecast that significantly changes the economics of the Company's proposed buyout of the power purchase agreements with Ocean State Power. The new forecast provided in RR-DTE-6 may not, however, fully reflect the economic effects of the recently announced Locational Installed Capacity ("LICAP") charges that the Independent System Operator ("ISO") of the New England transmission system filed for in August of this year, as quantified by the Company in testimony before the Federal Energy Regulatory Commission ("FERC").<sup>2</sup> The Company calculated above-market costs as the present value of the difference between its forecast of the total cost under the existing PPA terms and the market value based on the Henwood Energy Service Inc.'s ("Henwood") Northeast Electricity and Gas Price Outlook for Fall 2003, with updates in March and May, 2004 for years 2004 through 2006 ("Northeast Electric and Gas Price Forecast"). Exh. NSTAR-RBH, pp. 18-19. Pursuant to the Department's record request, the Company updated its calculations once the Henwood Fall 2004 forecasts were available. The Attorney General received the updates to the Company's Petition on November

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<sup>2</sup> The Company's testimony was supplied as Exhibit AG-1 in *Petition of Boston Edison Company and Commonwealth Electric Company for Approvals Relating to the Restructuring of Power Purchase Agreements with Northeast Energy Associates Limited Partnership*, D.T.E. 04-85. The Attorney General asks that the Department take administrative notice of the record in docket D.T.E. 04-85. 200 C.M.R. 1.10 (3).

12, 2004, long after the Hearing Officer had closed the evidentiary record. On November 18, 2004, the Department requested more information from the Company which the Attorney General received November 19, 2004.<sup>3</sup>

Since this new information impacts the Company's estimation of the amount of customer savings, the Department should reopen the hearing in order to fully evaluate what changes the new forecasts have on the Company's Petition. The Henwood Fall 2004 forecast data was not known at the time of the hearing and the Company has only recently provided information on the potential impact the forecast data could have on customer savings, a material issue that would likely significantly impact the Department's decision. Furthermore, since the Department closed the record in this case, the Company filed testimony before FERC in docket ER03-563-030 that quantifies the full impact of the new LICAP charges which are significantly different from those capacity charges that are embedded in the Henwood Fall 2004 forecast. It appears that the use of those higher LICAP amounts the Company uses in its FERC testimony, in combination with the new energy forecasts, will cause the economics of the contract buyouts to reverse, so that the Company's proposal would ultimately cost customers. The parties must have an opportunity to examine this new information in the context of an evidentiary hearing. The Department, therefore, should reopen hearings in this case.

#### **IV. CONCLUSION**

The Department should allow this motion to reopen the hearings.

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<sup>3</sup> The Department requested a sensitivity analysis for changes to energy and fuel prices for both above-market costs and customer savings using the Henwood Fall 2004 forecast data.

Respectfully Submitted,

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By:

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